

*Immigration and Social Justice*  
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**Introduction**

As this is being written, the United States Senate, President and House of Representatives are trying to devise politically viable legislation to address the situation of illegal immigrants in the US. Legislation currently being considered involves procedures such as returning to one's country of origin, obtaining of visas, paying of significant fines, and going to the end of the line for application, etc. Critics of the proposals point to the unfairness of granting amnesty to those who have not followed the current process for legally immigrating. What this tangled political discussion avoids is the broader question of how any country, especially a rich, powerful and desirable for immigrants country such as the United States is to deal justly with immigration. And, the United States is not alone; many other Western European countries are struggling to deal with significant immigration pressures. It is arguable that the results of recent presidential elections in France were significantly impacted by immigration concerns.

While the problem of immigration is connected to concerns about social justice, not all countries face it. Impoverished countries, those with strapped resources from which significant numbers of its inhabitants desire to emigrate, confront a different concern, namely the problem of emigration, the question of how to deal justly with large numbers of individuals who desire to emigrate. In this paper, after first addressing the problem of emigration, I will then lay out some of the competing concerns involved in the immigration question, drawing an analogy between immigration and other scarce goods. After considering and rejecting some obviously inadequate simple attempts to provide a just approach to immigration, I present some tentative suggestions on how to address the problem of providing a socially just approach to immigration.

## **Emigration**

Let us begin with the converse concern, that of emigration. It might appear that the problem of emigration is not a serious problem at all. After all, the United Nations Declaration of Human Rights includes among its articles, Article #13:2, which states that “Everyone has the right to leave any country, including his own...” It is easy to see what would justify such a claim to a right to emigrate, namely the right to liberty of movement, to choose one’s way of life requires that one be able to change one’s living circumstances, which would entail the right to leave one’s country of origin. During the Cold War Soviet-block countries often sought to prevent certain of their citizens from emigrating. It was conventional wisdom in the West to be critical of these efforts as attempts to thwart basic liberty. Similar criticisms arise today of countries, such as China, which seek to control the emigration by means of restrictive policies, including the denial of exit visas and the threat of preventing family reunification.

It is all too easy for those living in countries to which people desire to immigrate to criticize policies aimed at restricting emigration. Why would a country wish to control emigration? Anti-emigration policies are typically not the result of officials exercising coercive force on a whim. Individuals who possess qualities of value to the state are reasonably taken to be resources for that state. Those wishing to emigrate for financial reasons are often those in whom the state has invested significant resources, including special training designed to contribute to general social well-being, such as education in fields such as medicine. When highly trained individuals leave, their departure can reasonably be expected to lead to negative consequences for the society from which they emigrate. If emigration involves non-negligible costs to the country of origin, fairness might seem to require a mechanism to reimburse the country of origin for special training costs incurred--a controversial proposal indeed.

## **Immigration as a Good**

Unlike emigration, there is no universally recognized right to immigrate. The Universal Declaration of Human Rights does recognize that “Everyone has the right to freedom of movement and residence within the borders of each state.” (Article #13:1). But there is no recognized right to establish citizenship in the country of one’s choosing. If there is no moral right to immigrate, then what is the proper moral status of immigration? I suggest that we think of immigration rather as a good. But, what kind of a good is immigration?

It is standard to divide goods into those which are intrinsic and those which are instrumental. But, it is not plausible to think of immigration as an intrinsic good. Those who have been forced, usually against their will, to leave their society of origin and to immigrate to another society in which they barely manage to survive in a much worsened state provide proof that immigration is not an intrinsic good. So, if immigration is not an intrinsic good, must it be an instrumental good? Again, it is all too easy to think of cases in which immigration has not led to a better state of affairs for the immigrant. Instead, it seems more plausible to consider immigration as a possible instrument good. Immigration is often seen as a means to enable someone to increase what she takes to be her happiness, self-realization or basic flourishing or that of those who depend on her by providing access to a “better” life than that perceived to be available in the immigrant’s country of origin. In order for immigration to be so perceived as an instrumental good, it must be possible for a perceiver to imagine herself or her dependents thriving as the result of immigration to another country at a significantly higher level over that of their country of origin. In what follows I consider cases of immigration to the United States, the countries of Western Europe, and some additional Asian countries, including Australia, which I will refer to as Prosperous Social Democracies [“PSDs”], current prime targets for immigration.

## **Competing Demands of Social Justice**

If immigration is a perceived instrumental good, and if we suppose that those who so perceive immigration usually perceive correctly, then there is a legitimate moral concern for how this perceived good is to be distributed among those who desire to possess it or who have a fair claim to be considered for receiving it. One important demand of social justice is to distribute goods fairly. What complicates the situation of social justice and immigration to PSDs is that, in addition to immigration, there are competing demands of social justice that also require consideration. PSDs have evolved and continue to improve policies to address important matters of social justice for their citizens that put demands on limited social resources. Let us consider these competitors.

Although there are important differences in terms of the degree, quality and access, PSDs are committed to providing a net of social benefits for their citizens. This net includes items such as provision for lodging, food, education, health care, job training, public sanitation, public transportation, unemployment assistance, support for disabled individuals, and care of the elderly. These items are all justified by appeals to social justice. And, the programs to provide these items currently consume a significant portion of the national budgets of PSDs. For many would-be immigrants, it is the idea of having access to these very items in the social net which makes immigration to PSDs a perceived instrumental good of sufficient value to justify undertaking immigration. Many would-be immigrants are also motivated, to be sure, by the hope of obtaining significant improved employment. But, without hope of access as well to social net items, immigration to PSDs would lose much interest for most would-be immigrants.

An additional factor which is needed to create the moral problem of immigration and social justice is that there are, apparently, huge numbers of individuals who desire to immigrate

to PSDs. According to conventional wisdom this number of desiring individuals is too large to enable the each PSD to both admit all those who desire to immigrate, and still continue to provide the same degree of care for all of their current citizens. Were there only a few thousand people who desired to immigrate each year to a particular PSD, it would certainly be possible for that PSD to accommodate these individuals without significant effect on overall costs for basic social coverage. The problem PSDs apparently face is the number of individuals desiring to immigrate being so large such that there is no way to maintain current coverage given funding mechanisms currently in place. In addition to funding mechanisms, there are questions to be raised for certain PSDs about there being enough additional natural resources, such as water and land. And, all PSDs would need to address further concerns with creating and maintaining additional infrastructure for public housing, education, health care and social support.

On the other hand, it is also reasonable to suppose that there is much more that PSDs could be doing by way of increasing immigration over current levels without significant impact. There is no reason to suppose that any PSD is currently at its maximum carrying capacity, and there seems to be good reason to suppose that some PSDs could accommodate many more immigrants that are currently admitted.

A further, somewhat ironic, historical complication is that some PSDs, including the United States and France, also view themselves as being ‘a nation of immigrants’, and others, such as Germany, have a recent history of encouraging immigration to provide needed labor for industry. When national identity is defined in terms of immigrant origins of many citizens, this raises an obvious moral concern: how can those whose ancestors benefited from immigration be morally justified in excluding access to this same process to those who currently wish to avail themselves of the same opportunity?

A related issue is that many PSDs also have a significant colonial past and that many of those people who currently wish to immigrate are from former colonies exploited by those PSDs. Some PSDs are also now experiencing a growing awareness of a colonial past. This awareness creates a sense of culpability in policy makers about past exploitation that needs to be redressed. One perceived way of redressing this exploitation would be to maintain or even to increase immigration from former colonies.

Thus, five moral factors related to social justice compete with each other in the matter of immigration to PSDs. (1) Immigration is a perceived instrumental good, due in part to its providing a substantial social net. (2) There is the concern to provide adequate and expanding social support for current citizens. (3) Too many non-citizens desire to immigrate to be able to provide citizenship and support for all who would wish it. (4) Still, more immigration seems possible without significant effect. And, (5) there are historical pressures, based on national identity or past exploitation, to increase immigration. In order to better determine how one should deal with such competing moral claims, let us now consider an analogous case from medical ethics, namely the problem of distributing exotic life-saving technology.

### **A Medical Ethics Analog: Comparison and Argumentation**

Having identified immigration as a limited good, it is worth comparing it to other limited goods. One such good is that of what Nicholas Rescher calls “exotic medical life-saving technology”. This phrase originally referred to life preserving devices such as kidney machines or expensive organ transplants, which, when first introduced, existed in very short-supply. They just could not be made available to all who needed them to survive. In the wake of technological advances, Rescher’s term now picks out other items at the cutting edge of medical innovation.

The introduction of kidney machines and organ transplants generated serious ethical concerns about how to determine who should receive access to this valuable but tragically limited resource. What became quickly evident was that simple moral answers failed. And, given the nature of the case, it was not possible to avoid the moral problem by proposing a technological solution, for in the short run not everyone could receive treatment and those who did not were condemned to die relatively soon. The moral problem was to determine who should receive treatment. In response, ethics committees were formed to make hard decisions to determine to whom to apportion scarce medical resources. While advances for dealing with organ failure did eventually occur, similar problems can be expected as long as medical technology continues to provide expensive breakthroughs in medical treatment.

The relevance of this example for the immigration debate is clear. Immigration is a scarce good; it apparently cannot be made available to all who want it. There are many for whom immigration would provide an “exotic future life-enhancing opportunity”. Offering it only to those with whom one has a particular ethnic or religious affinity would constitute unjustifiable partiality. Some morally appropriate way should be found to decide how to allocate opportunity for immigration. Thus, given obvious points of comparison, it is useful to consider some of the strategies that were employed in the kidney machine and organ transplant cases to see how they might apply to the immigration problem.

It was clear in the case of scarce kidney machines that certain simple moral appeals such as the appeal to basic rights, to the Golden Rule, or to Divine Commands, were fraught with difficulties. While one may have a right not to be killed, one does not thereby have a right to use a machine that one does not own. Similarly, the right to decent treatment does not imply that one has a right to become a member of a society to which one does not now belong. It is clear that

those who wish to immigrate have rights, but this by itself is not sufficient to establish a right to immigrate. Whatever rights a would-be immigrant may have, these rights are had by other would-be immigrants as well. Since not all can immigrate without apparently destroying the social system, there is no way to solve the immigration problem by appeal to rights. And, similar comments can be made in connection with an appeal to Divine Commands.

As for the Golden Rule, the problem is that one cannot treat all of those involved in ways in which one would like to be treated oneself. This, however, does not justify refraining from treating anyone in the way in which one would like to be treated—one should still make a choice, and the Golden Rule, by itself, offers no guidance on how or who to choose. Similar reasoning applies to the case of immigration. That one would want to be allowed to immigrate does not help in making decisions about whom to allow to immigrate when not everyone who wants to can. Thus, appeal to such simple rules to solve the problem will not work. Instead, let us turn to a more complicated approach, namely to the classic proposal from Nicholas Rescher and let us see how it might be modified to apply to the question of immigration.

Rescher's more complicated solution to the problem of allocating exotic life-saving technology is instructive. It is based on a two-step process and appeals to two different types of criteria. The first step in the process addresses considering whom to consider for inclusion in the pool of candidates. The second step involves comparing the candidates in the pool. In appealing first to criteria of inclusion Rescher is clear about limiting consideration of who should receive the scarce good first to those who, among other things, will be successful recipients of the treatment and also who appropriately count as being one's constituents. It is important to note that Rescher leaves open how one determines who one's constituents are. Rescher's second set of criteria, comparison criteria, include factors such as life-expectancy, family role, potential

future contributions and past services rendered. One applies these two sets of criteria to determine a ranking of who should be allowed first access to limited medical technology.

Let us now consider how a follower of Rescher might adapt his approach to the problem of immigration. First, to define a reasonable candidate pool, one considers who among the many applicants will be a “successful” immigrant, and, perhaps, who counts as a constituent by requiring that candidates for immigration must have a citizen sponsor to move to the next round of consideration. In the second round, one can imagine various factors such as skills, education, genetic endowment, past accomplishments and likely future contributions to society being considered. Applying this two step procedure would enable one to determine who would receive the highest rankings to be admitted as successful immigrants.

Before considering the moral adequacy of this approach, two potential worries to the proposed comparison between exotic life-saving technology and immigration need to be addressed. The first worry is that the lack of access to kidney machines, unlike lack of access to immigration, will lead to death. While this point is generally correct, it does not show that the comparison is flawed. The consequences of not immigrating, while not as dire as death, are often sufficiently negative as to justify viewing immigration as a significant life-transforming process. A second objection is that the application of the Rescher model is flawed because, unlike the case of allowing patients access to a limited number of kidney machines, there is no clear limit to the number of immigrants that can be admitted into a country. While I think this objection needs to be granted, I do not think it fatal. Determining the acceptable number of immigrants should be construed as a *sorites* (a standard example of which is the challenge of determining the number of hairs one must lose to become bald). While one cannot identify a definite maximum number of immigrants that can be accepted without significant disruption,

there is certainly a number beyond which it is reasonable to suppose that major disruption of the social system will occur.

Let us now turn to standard criticism of the Rescher model. As applied to kidney machines one standard objection, from George Annas, urges that Rescher's model, by appealing to conventional social criteria, is designed to preserve the *status quo*, to reward the bank teller over the poet. And, it is not clear why a more conventional individual should benefit at the expense of a more unconventional person. Similar worries apply to cases of immigration. It is hard to see how significant diversity would be generated by use of a Rescher-type model, and why immigrants who more nearly resemble standard criteria should be taken to be more deserving than those who do not. A second objection is the concern that the notion of inclusion based on constituency is morally artificial, both as regards kidney machines and immigration. When it comes to medical treatment, all who need treatment are deserving of consideration. Similar comments apply to immigration. All who wish to immigrate should be considered.

Several alternatives have been proposed to Rescher's model for allocating scarce medical resources. Some have proposed a "market" approach, arguing that those who can best afford them should have access to them. The problem with this policy is that, since one cannot count on wealth being fairly distributed, it seems only to compound unfairness to base distribution of scarce resources on another unfair distribution. Similar comments apply to the problem of immigration. Others have urged relying on a "first-come-first-served" policy; but this strategy faces the objection that those who apply first are likely to be in a more privileged social position from those who apply later, and that social privilege should not be rewarded. Similar comments also apply to applying first-come-first-served to the problem of immigration. A third alternative is to rely on a lottery system to distribute scarce resources. And, it should be noted that there

already is a green-card lottery in effect for those desiring to come to the United States. There does seem to be a significant element of fairness in using a lottery system—it compares with drawing straws to determine who gets into the life-boat. Still, it also seems inappropriate to claim that no special feature should ever be relevant. Societies should have the right to take in as members some individuals with special features merely because of those special features.

This leads us to note that one way to bring some additional clarity to the immigration problem is to admit that there are two different kinds of immigration that need to be considered, selective and general. Selective immigration is immigration based on specific features. These features may include characteristics which a society wishes to have in order to enrich the society, such as artistic or technological training, or they may include cases of mistreatment in the immigrant's home country for which a PSD may wish to provide asylum. General immigration, however, is immigration in which no specific features are at issue. For such immigration, at present perhaps the fairest approach in the present situation, given the sheer number of likely individuals that would like to be considered, would involve a lottery procedure. While there may remain some who hold that all immigration should be selective, this view should, for reasons already presented, be rejected.

### **Towards a conclusion**

We have seen how comparison of immigration to scarce medical resources helps indicate what some elements of a general solution to the immigration problem might be, as well as pointing out some guidance regarding elements to avoid. But, we are far from having a complete and morally coherent program. There are further issues that demand explicit discussion. The first of these is the problem of official ignorance. There is at present substantial official

ignorance on the part of PSDs as to what their reasonable carrying-capacity in terms of immigration population actually is. There seems to be unwillingness on the part of many PSDs to engage publicly in the obtaining and disseminating of this information. It is, of course, easy to understand why this would be the case. If a PSD states publicly that it has an immigrant carrying-capacity of a certain amount, then there will be great pressure from would-be immigrants and their supporters for that PSD to produce a plan to add immigrants up to the number specified.

A further concern relates to what might plausibly be expected were PSDs drastically to increase their immigrant admissions rates. One might naturally expect the demand to increase as well. One basic concern is to address what can be done to improve conditions in those countries where there currently is a huge demand for immigration, so as to undercut this demand. It should be obvious to all that a mere handful of countries cannot physically support the bulk of the world's population at a level of existence to which they would like to become accustomed. Much more needs to be done to improve local conditions to help stem immigration pressures. In addition, more needs to be done to change current economic practices by many in PSDs that contribute to worsening economic conditions that in turn fuel increased immigration pressures.

With these caveats, the tentative conclusions towards which this paper has been leading may now be briefly summarized. Given that immigration is an instrumental good and that we are most likely not at carrying capacity for immigrants in PSD, it follows that immigration rates should be increased. But, these increases should be based on careful study and planning and should only be put in place when infrastructure improvements to handle such increases have also been planned and implemented. Both selective and general immigration should be pursued, and a more significant lottery system should be implemented for increasing general immigration.

## References

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